IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 589 (S/S) of 2003

Om Prakash Purwal & others …… Petitioners

Versus

State and others …… Respondents

Date of decision: 16th November, 2004

For the approval of:

Hon'ble Mr. Justice Prafulla C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 589 of 2003 (S/S)

Om Prakash Purwal
and others ……..… Petitioners

Versus

1. State of Uttaranchal, through Secretary Education, Government of Uttaranchal Dehradun.
2. Director of Education (Secondry) Uttaranchal, Dehradun
3. Joint Director of Education, Garhwal Region at Pauri, Distt. Pauri Garhwal …… Respondents

Mr. Sudhanshu Dhulia, Senior Advocate assisted by
Ms. Puja Banga, learned counsel for the petitioners.
Ms. Seema Sirohi, learned Brief Holder for the respondents.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioners have sought mandamus commanding the respondents to consider their cases for appointment on the post of Assistant teacher L.T. Grade (Hindi Language), after awarding quality points to them for their Post Graduate Degree.

2) Brief facts of the case, as narrated in the writ petition, are that the recruitment for the post of Assistant Teacher, L.T. Grade is governed by the U.P. Subordinate Education (Trained Graduates Grade), Service Rules, 1983. The respondent No. 3 issued an advertisement on 24.06.2002 publishing the same in daily newspapers on 25.06.2002 (copy Annexure- 1 to the writ petition), inviting applications for the post of Assistant Teachers L.T. Grade in Garhwal Mandal / Kumaon Mandal for various

subjects, including Hindi (language). The educational qualification for the post of Asst. Teacher L.T., Grade Hindi Language is Graduation with the said subject. Apart from this a candidate is required to have Sanskrit as a subject in the intermediate and diploma in L.T. or B.Ed. The petitioners, according to the petition, fulfilled the requisite qualifications and eligibility for the appointment to the post of Assistant Teacher, L.T. Grade, Hindi (language). Petitioners, in addition to the essential qualifications, also posses Post Graduate Degree in Sanskrit. Petitioner No. 1 has done his Post Graduation in Sanskrit as well as in Hindi. The quality point marks are awarded to the candidates under Rule 15 of the above mentioned Rules of 1983 with Appendix 'D' thereto in the following manner:-

S.No.	Name of Examination	Quality Points.
(i)	High School	The % of Marks/10
(ii)	Intermediate	The % of Marks x 2/10
(iii)	Graduate Degree	The % of Marks x 4/10
(iv)	Training A Theory Ist Division- II nd Division III Division Practical- Ist Division- II nd Division IIIrd Division	 12 06 03 12 06 03
(V)	Post Graduate Degree Ist Division- II nd Division IIIrd Division	 15 10 05

It is also alleged that the Rules, does not require that the Post Graduate Degree should be on the same subject for which the appointment has been sought. When the petitioners were not given appointment, on enquiry, they came to know that since they were Post Graduate in Sanskrit, as such they were not given quality points. It is further alleged in the writ petition that the stand taken by the respondents in not granting the quality points to the petitioners for their Post Graduate Degree is misconceived and against the rules framed under Article 309 of the Constitution of India. The petitioners have been discriminated as against one Shri Purananand Bhatt, son of Shri Vishweshar Prasad, who was similarly situated and is given appointment letter by the respondents. The petitioners have also sought parity with S/Shri Satish Pokhriyal, Indramohan Dobhal, Manmohan Bahuguna, Laxmi Bamrara and Sarita Sayana. Alleging act of the respondents to be violative of Article 14 and 16 of the Constitution of India and relying on the principle of law laid down in the Apex Court Judgment given in Dr. M.A. Haque Vs. Union of India , (1993) 2 S.C.C. Pg. 213, the present petitioner has been filed.

3) A counter affidavit has been filed on behalf of respondents No. 1 and 2 in which contents of the writ petition as to the advertisement inviting applications for the post of Assistant Teacher, L.T. Grade, Hindi (Language) are admitted. It is also not denied if the petitioners do not fulfill essential qualifications. However, it is stated in the counter affidavit that the quality points for the Post Graduate Degree in Sanskrit cannot be counted for the post of Assistant Teacher, L.T. Grade, Hindi (Language).

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed thereto.

5) The short question for consideration before this Court is whether, the petitioners were wrongly denied quality point marks for their Post Graduate Degrees in Sanskrit and are they wrongly deprived their appointment to the post of Assistant Teacher, L.T. Grade, Hindi (Language).

6) Admittedly, the respondent invited applications for the various posts of Assistant Teachers, (L.T.) Grade, including 190 posts of for the subject Hindi (language), through advertisement (copy Annexure 1 to the writ petition). It is also not disputed that all the four petitioners were candidates for the post of Assistant Teacher, L.T. Grade, Hindi (language) and possess essential qualifications. It is also not denied that for the purposes of recruitment, quality points are required to be counted as provided in Appendix 'D' read with Rule 15 of the U.P. Subordinate Educational (Trained Graduates Grade) Service Rules 1983. The only dispute raised in counter affidavit relates to the point if the quality point marks are not to be awarded to the petitioners for their Post Graduate Degree in Sanskrit.

7) A reading of Rule 15, read with Appendix 'D' of the U.P. Subordinate Educations (Trained Graduates Grade) Service Rules, 1983, shows that it is not necessary to hold Post Graduate Degree in the same subject for which the candidate has sought appointment in L.T. Grade. The reason for keeping this point silent in the Appendix and the Rules appears to be that in the L.T. Grade subjects like Social Studies, Biology, Science etc., each includes different subjects for which Degrees are given in the Post Graduation. For example, Biology includes Botany as

well as Zoology. Similarly, Science includes Chemistry as well as Physics. Likewise, Social Studies includes Civics and some other subjects. For Hindi (language) in High School, a student is taught elementary Sanskrit as well. In the circumstances, the excuse mentioned in the counter affidavit for not giving quality points to the petitioners for their Post Graduate Degree in Sanskrit for considering their cases for the purposes of Assistant Teacher, L.T. Grade, appears to be wrong.

8) The respondents have cleverly avoided to answer contents of para 14 of the writ petition. In said para, the petitioners have specifically stated that other similarly situated candidates like Purnanand Bhatt, thereafter S/Shri Satish Pokhriyal, Indramohan Dobhal, Manmohan Bahuguna, Laxmi Bamrara and Sarita Sayana were given quality point marks for Post Graduate Degree in Sanskrit at the time of considering their cases for the post of Assistant Teacher, Hindi (language). In answer to this para in the counter affidavit, it has been stated that reply will be given at the time of hearing, but at the time of hearing and learned Standing Counsel could be deny the above alleged fact nor could she show, if the copies of appointment letters of said persons annexed as Annexure Nos. 3 and 4 to the writ petition are not correct. In the circumstances, this Court is convinced that while considering the cases of petitioners, they have been discriminated violating Article 14 and Article 16 of Constitution, and in their case also quality points should have been taken into account for the Post Graduate Degree in Sanskrit. It appears that the respondents have failed to adhere the U.P. Subordinate Educational (Trained Graduates Grade) Service Rules, 1983. In view of principle of law laid down in Dr. M.A. Haque Vs. Union of India, 1993 (2) S.C.C. Pg. 213, the rules framed under Article 309 of the Constitution of India, should have been followed by the respondents.

9) In the circumstances, in view of above discussion, in the opinion of this Court, the petitioners have been wrongly deprived of their quality point marks for their Post Graduation Degree obtained by them in the subject of Sanskrit. Accordingly, the writ petition deserves to be allowed. Therefore the writ petition is allowed. A mandamus is issued to the respondents to consider the cases of the petitioners within a period of three months for their appointment to the post of Assistant Teacher, Hindi (language), afresh taking into account quality point marks for the post Graduation Degree obtained by them in Sanskrit. And, those of the petitioners who obtain higher total quality point marks to the last selected candidate in General category, be given appointments within a month there-after on the post of Assistant Teacher, L.T. Grade. No order as to costs.

(Prafulla C. Pant J.)

Dt: November 16, 2004
H.Negi